

Congress of the United States
Washington, DC 20515

July 12, 2019

Mr. Walter Cruickshank, Acting Director
Bureau of Ocean Energy Management
1849 C Street, NW
Washington, D.C. 20240

Dear Acting Director Cruickshank:

After hearing from Rhode Island fishermen and state regulatory experts, we write to urge you to revise the Bureau of Ocean Energy Management's (BOEM) regulations, guidance, and procedures related to offshore wind development in order to reduce conflicts between developers and other stakeholders.

On April 5, 2019, the Rhode Island Coastal Resources Management Council (CRMC) submitted comments in response to the NOAA-directed Advanced Notice of Proposed Rulemaking (ANPR) NOAA-NOS-2018-0107 concerning Coastal Zone Management Act federal consistency regulations. Within these comments, CRMC made two recommendations that could provide more predictability to the offshore renewable energy industry and greater fairness to other ocean users while planning for large-scale offshore wind projects. Although these comments were submitted to NOAA, they are most relevant to BOEM. We request that you review CRMC's formal comments to the rulemaking (enclosed), in particular the comments summarized below, and consider adopting them into BOEM policy for all future projects.

First, CRMC recommended that a consistency determination should not be requested from a state coastal zone management agency until after BOEM issues its Draft Environmental Impact Statement (DEIS). This change would help enable more timely and comprehensive reviews of proposed windfarms.

Second, with regard to the collection of fishery biological data, CRMC explained that the current methods of collecting biological fisheries data are insufficient and recommended that at least two full years (including all four seasons) of preconstruction data be collected before construction commences.

CRMC staff and fishermen have also suggested that BOEM require developers to set aside funding to:

- 1) assist fishermen to procure outside technical assistance to independently evaluate the impact of offshore energy projects on their businesses, and to help fishermen provide important data to state and federal regulators during the offshore wind siting, design, and development processes;
- 2) establish a scientific baseline of marine resources and habitat health prior to any testing, development, or disturbance as part of an offshore development;
- 3) provide for long term monitoring of local and cumulative impacts on fisheries and marine life for the duration of the lease; and
- 4) provide financial mitigation assistance whenever necessary.


In addition to these items, BOEM and other federal agencies, particularly NOAA and the U.S. Coast Guard, must better understand, articulate, and define the multiple equities involved in offshore wind development. It is clear that the consultation that has occurred among these agencies thus far did not identify or resolve key issues, specifically the vessel transit routes in wind energy areas, the impacts on the assets and procedures for search and rescue operations, and the ability of federal fishery survey ships to access the area in order to maintain consistent data sets. These and other issues should be dealt with earlier in the process.

Finally, keeping in mind the future development of offshore wind energy projects in the Northeast, we believe BOEM should establish a regional office in Rhode Island, basing key leadership and decision-makers close to the stakeholders and federal partners who will be affected by BOEM's policies. Indeed, by creating a physical presence in the area, BOEM would be better situated to connect with local stakeholders and to increase outreach and communication. Stakeholder engagement and public participation in the governance of these projects will enable their success and decrease the likelihood that projects will be impeded by avoidable obstacles.

We ask that you respond to the specific issues we have outlined in this letter, including an explanation of whether the actions can be pursued under existing legal authority. Thank you for your attention to this issue, and we look forward to your prompt reply.

Sincerely,



Jack Reed
United States Senator

Sheldon Whitehouse
United States Senator

James R. Langevin
Member of Congress

David N. Cicilline
Member of Congress

Enclosure

cc: Dr. Neil Jacobs, Assistant Secretary of Commerce for Oceans & Atmosphere
Vice Admiral Daniel B. Abel, Deputy Commandant for Operations, U.S. Coast Guard



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April 5, 2019

Mr. Kerry Kehoe
Federal Consistency Specialist
NOAA Office for Coastal Management
1305 East West Highway, 10th Floor, N/OCM6
Silver Spring, MD 20910

Attn: CZMA Federal Consistency ANPR Comments

Re: NOAA-NOS-2018-0107 – Advanced Notice of Proposed Rulemaking (ANPR)

Dear Mr. Kehoe,

The Rhode Island Coastal Resources Management Council (CRMC) is pleased to submit these comments in response to the above referenced ANPR for NOAA's Coastal Zone Management Act (CZMA) federal consistency regulations at 15 CFR Part 930. The CRMC is responding only to NOAA's question 1, which asks:

“What changes could be made to NOAA's federal consistency regulations at 15 CFR part 930 that could streamline federal consistency reviews and provide industry with greater predictability when making large investments in offshore renewable and non-renewable energy development?”

In the CRMC's view, the most important aspect that the offshore renewable energy industry needs for predictability when making large investments in offshore renewable energy projects is understanding how to design wind farm layout, specifically turbine orientation and spacing, to accommodate existing coastal uses. Wind farm layout is critical to the success of minimizing adverse impacts on navigation and commercial fishing operations. The offshore renewable energy industry is required by the Bureau of Ocean Energy Management (BOEM) to provide adequate *in situ* testing, boring and sampling at each foundation location and include that information within a construction and operations plan (COP) pursuant to 15 CFR § 585.626. This BOEM requirement is a considerable expense to offshore wind farm developers, and yet it must be completed as part of the COP, unless BOEM issues a waiver at the developer's request.

Pursuant to 15 CFR § 585.627(a) offshore wind farm developers must also include a consistency certification within their COP when filed with BOEM. Herein lies the problem. If the offshore renewable energy developer has not completed their due diligence early in the site assessment phase (ideally when a Site Assessment Plan is being prepared) by consulting with likely affected states and coastal users, then an offshore wind farm design may be pre-determined and advanced as part of a COP that may cause coastal effects. Thus, it is imperative that the wind industry consult with state CZM programs well in advance of undertaking the expensive site specific geotechnical work for each turbine location as required by BOEM.

Since NOAA has been coordinating with BOEM on federal consistency and offshore renewable energy issues, the CRMC recommends that the two federal agencies continue to work together to address two important matters that cannot be currently addressed solely within NOAA's federal consistency regulations. First, the BOEM Draft Environmental Impact statement (DEIS) for offshore renewable energy projects should be recognized as necessary data and information (NDI) required under 15 CFR §§ 930.58 and 930.76 that is provided to states *before* the commencement of their federal consistency review period. Therefore, a consistency certification for offshore renewable energy projects should *not* be filed with a state coastal zone management agency until *after* BOEM issues its DEIS for the offshore renewable energy project. This would ensure timely and comprehensive state and federal agency reviews of proposed offshore wind farm turbine orientation and spacing, along with the development of alternatives within the DEIS, to eliminate or minimize to the greatest extent any potential adverse impacts to coastal resources or uses.

Second, offshore renewable energy developers should be required by BOEM to provide two (2) full years, including all four seasons (spring, summer, fall and winter), of pre-construction commercial fishery biological assessment monitoring to establish baseline conditions within the proposed offshore wind farm to accurately characterize the fishery resources before construction commences with foundation installation and scour protection placement. Under current BOEM regulations at 30 CFR § 585.626, the developer is required to provide "a description of the results of biological surveys used to determine the presence of live bottoms, hard bottoms, and topographic features, and surveys of other marine resources such as fish populations (including migratory populations), marine mammals, sea turtles, and sea birds." This BOEM requirement is not specific nor adequate to accurately characterize the fishery resources and provide sufficient data to aid in an assessment of impacts that an offshore renewable energy project may have on the fishery resources once construction is completed and wind farm operations are ongoing. Thus, two years of pre-construction commercial fishery biological assessment monitoring should be a minimum BOEM required condition for every offshore wind farm project.

Based on the recent experience of the CRMC in reviewing a large-scale offshore wind farm, the CRMC recommends the following changes to NOAA's federal consistency regulations to provide greater predictability for the offshore renewable energy industry. Deleted text is ~~struck-through-and red~~, while new text is underlined, bold and blue

Modify 15 CFR § 930.75 as follows:

*As a preliminary matter, any person intending to submit to the Secretary of the Interior an OCS plan which describes in detail federal license or permit activities affecting any coastal use or resource ~~should~~ **shall** obtain the views and assistance of the State agency regarding the means for ensuring that such activities will be conducted in a manner consistent with the management program **prior to the person filing the OCS plan with the Secretary of the Interior**. As part of its assistance efforts, the State agency shall make available for inspection copies of the management program document. Upon request by such persons, the State agency shall identify any enforceable policies applicable to the proposed activities, based upon the information submitted to the State agency.*

Rationale: As presently written the provision under this section of the regulations only *encourages* offshore renewable energy developers to consult with state coastal zone management agencies, which may or may not occur. The proposed change would ensure that offshore renewable energy developers *must* consult with state agencies *prior* to submitting their OCS plans with the Secretary of the Interior (BOEM) and resolve any potential inconsistencies with state enforceable policies early in the process before offshore renewable energy developers become committed both in design logistics and cost to a wind farm layout. Additionally, this modified provision as proposed may alleviate the need for the state coastal zone management agencies and offshore renewable energy developers to enter into stay agreements as provided under § 930.60(b) of the regulations during the state agency six-month review period.

Modify 15 CFR § 930.76(a) as follows:

(a) Any person submitting any OCS plan to the Secretary of the Interior or designee shall submit to the Secretary of the Interior or designee:

(1) A copy of the OCS plan;

(2) The consistency certification;

(3) A certification that the person has obtained the views of the State agency as required pursuant to § 930.75;

~~(34)~~ The necessary data and information required pursuant to § 930.58; and

~~(45)~~ The information submitted pursuant to the Department of the Interior's OCS operating regulations (see 30 CFR 250.203 and 250.204) and OCS information program regulations (see 30 CFR part 252).

Rationale: The proposed added text would ensure and provide verification to BOEM that the offshore renewable energy developer did in fact consult with the state coastal zone management agency.

Modify 15 CFR § 930.76(b) as follows:

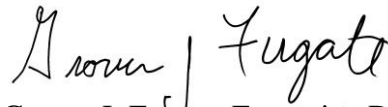
(b) The person filing the OCS plan with the Secretary of the Interior ~~or designee~~ shall furnish the State agency with a copy of the information submitted under paragraph (a) of this section (excluding confidential and proprietary information).

Rationale: The proposed added text would place the burden of filing an OCS plan on the offshore renewable energy developer (person) rather than the Secretary of the Interior. This change would ensure a timely filing of the OCS plan with the state coastal zone management agency, along with all other required information listed under § 930.76(a). Moreover, the proposed change is entirely consistent with the requirement at § 930.58 of NOAA's regulations under subpart D where the *applicant* is required to file the necessary data and information and consistency certification with the state coastal zone management agency. We recognize that this proposed change to NOAA's federal consistency regulations would also require a similar change in BOEM's regulations at 30 CFR § 585.628(c).

Kerry Kehoe, Federal Consistency Specialist
NOAA Office for Coastal Management
April 5, 2019
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Thank you for the opportunity to provide comments on the Advanced Notice of Proposed Rulemaking for NOAA's federal consistency regulations at 15 CFR Part 930. Please contact me at 401-783-3370 or email gfugate@crmc.ri.gov should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Grover J. Fugate". The signature is fluid and cursive, with the first name "Grover" and last name "Fugate" clearly distinguishable.

Grover J. Fugate, Executive Director
Coastal Resources Management Council

/lat

cc David Kaiser, NOAA/OCM
Allison Castellan, NOAA/OCM
Walter Cruickshank, Ph.D., BOEM
James Bennett, BOEM
Jennifer R. Cervenka, CRMC Chair
Anthony DeSisto, Esq., CRMC legal counsel
Jeffrey Willis, CRMC Deputy Director
James Boyd, CRMC Coastal Policy Analyst